

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ANTHONY C. MAZZONE,

Petitioner,

v.

**Civil Action No. 2:07 CV 35
(Maxwell)**

JOSE ESPARZA,

Respondent.

ORDER

It will be recalled that on February 22, 2007, *pro se* Petitioner Anthony C. Mazzone instituted the above-styled civil action by filing an Application for Habeas Corpus pursuant to 28 U.S.C. § 2255, wherein he challenged the fact that FCI Morgantown had deemed him ineligible for placement in a halfway house because his term of imprisonment was less than nine months and nine days. The Petitioner's Application was originally filed in the United States District Court for the District of New Jersey. Construing the Petitioner's Application as more appropriately brought pursuant to 28 U.S.C. § 2241, the New Jersey District Court transferred it to the United States District Court for the Northern

District of West Virginia by Order entered April 18, 2007.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

On May 16, 2007, Magistrate Judge Seibert entered an Order To Show Cause wherein he directed the Respondent to answer the Petitioner's Application within seven days from the date of said Order.

The Respondent's Motion To Dismiss and Response To Show Cause Order And Memorandum Of Law In Support Of Motion To Dismiss were filed on May 23, 2007. Thereafter, on June 1, 2007, the Respondent filed a Motion To Dismiss As Moot and Memorandum Of Law In Support thereof. In said Motion To Dismiss As Moot, the Respondent advised the Court that the Petitioner had been released from the custody of the United States Bureau of Prisons, pursuant to a detainer requested by Atlantic County, New Jersey, officials on May 31, 2007. The Petitioner filed a Response To Motion To Dismiss on June 13, 2007. In his Response, the Petitioner asked the Court to rule that he should have been placed in a halfway house prior to May 23, 2007.

On June 14, 2007, United States Magistrate Judge James E. Seibert issued a Report And Recommendation wherein he recommended that the

Petitioner's § 2241 Petition be dismissed as moot in light of the fact that the Petitioner was no longer in the custody of the Bureau of Prisons. With regard to the Petitioner's request that the Court find that he should have been placed in a halfway house prior to May 23, 2007, Magistrate Judge Seibert noted that, even were the Petitioner still in the custody of the Bureau of Prisons, he would not have been entitled to the requested ruling, since, at best, the Court could only have directed the Bureau of Prisons to consider the Petitioner for placement in a Community Corrections Center. Thereafter, on November 15, 2007, Magistrate Judge Seibert issued an Order Correcting Report And Recommendation Issued June 14, 2007. In this Order, Magistrate Judge Seibert noted that his June 14, 2007, Report And Recommendation had neglect to recommend a specific ruling on the Respondent's Motion To Dismiss. In this regard, Magistrate Judge Seibert indicated that it was his recommendation that the Petitioner's § 2241 Petition be dismissed as moot; that the Respondent's Motion To Dismiss be denied as moot; and that the Respondent's Motion To Dismiss As Moot be granted.

In his June 14, 2007, Report And Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised the parties that

a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no objections to either Magistrate Judge Seibert's June 14, 2007, Report And Recommendation or the recommendations set forth in his November 15, 2007, Order Correcting Report And Recommendation Issued June 14, 2007, have been filed by either party and that this matter is now ripe for review.

Upon consideration of Magistrate Judge Seibert's June 14, 2007, Report and Recommendation and the recommendations set forth in his November 15, 2007, Order Correcting Report And Recommendation Issued June 14, 2007, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on June 14, 2007, be, and the same is hereby, **ACCEPTED** in whole. It is further

ORDERED that the recommendations set forth in United States Magistrate

¹The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

Judge James E. Seibert's November 15, 2007, Order Correcting Report And Recommendation Issued June 14, 2007, be, and the same are hereby, **ACCEPTED** in whole. Accordingly, it is

ORDERED that the Petitioner's § 2241 Petition (Docket No. 1) be, and the same is hereby, **DISMISSED** as moot in light of the fact that the Petitioner is no longer in the custody of the United States Bureau of Prisons. It is further

ORDERED that the Respondent's Motion To Dismiss (Docket No. 13) be, and the same is hereby, **DENIED** as moot. It is further

ORDERED that the Respondent's Motion To Dismiss As Moot (Docket No. 14) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate

Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record herein.

ENTER: March 6 , 2008

/S/ Robert E. Maxwell

United States District Judge